IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.173 OF 2005
IN
WRIT PETITION NO.3052 OF 2004

Kushal Ramji Mistry(Dhodi/Chobadia) ..Petitioner.

V/s.

The State of Maharashtra & ors. ..Respondents.

Mr.V.V.Pai for petitioner.

Mr.A.H.Palekar, AGP for respondent No.1 to 3.

Mr.G.D.Utangale i/b M/s. Utangale & Co. for respondents No.4.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 20, 2006.

P.C. :

1. This petition is for initiating contempt action against the respondents for having committed breach of directions contained in the order dated 25th April, 2005 in Writ Petition No.3052 of 2004. The directions relevant for the purpose of present Petition are one of directing the appellate authority to decide the appeal within six weeks from the date of the order. In so far as that direction is concerned, it is not in dispute that appeal has been finally disposed of on 8th November, 2005. In that sense, there is delay in deciding the appeal but that by itself cannot be the ground for initiating

contempt action. In any case, as appeal has been finally disposed of on 8th November, 2005, it is not necessary to precipitate the matter any further.

2. The second direction in the order dated April 25, 2005 required the parties to maintain status quo "pending" decision of the appeal. In this petition, which was filed in June, 2005, the main grievance is that the respondent No.4 was continuing development of the said plot in spite of the order of status quo. This grievance was considered by this court on 23rd June, 2006 when it was ordered as follows:

> "Notice returnable after two weeks. In the meantime status quo, in regard to the Petitioner's Premises. Ms. Rane for respondent No.4 waives service."(emphasis supplied)

In other words, the argument of the petitioner that it was not open to the respondent to continue with the development of the suit plot, in view of the limited order of status quo regarding the Petitioner's premises, has been implicitly rejected. On account of order dated 23rd June, 2005 the respondents were obliged to maintain status quo with

regard to the premises in occupation of the petitioner. Now further affidavit is filed before this court pointing out that the respondent No.4 caused to demolish the structure-7,8, 10 totally and structure 12 partly from amongst structure which were standing on the site on 25th April, 2005 being part of chawl No.2. The list of occupants of the respective structure is placed on record at page 76. The structure No.7 was occupied by Smt.Manjula S. Nagar, Structure No.8 was occupied by Smt. Leela Shankar Dhodi and Structure 10 was occupied by Kumari Kusum Shankar Dhodi. In other words, none of the said structures are occupied by the petitioner as such. If it is so, protection granted under the order dated 23rd June, 2005 was to enure only in respect of structure occupied by the petitioner and as the structure No.7,8 and 10 are occupied by some other person, question of initiating action for contempt against the respondents does not arise. To get over this position, counsel for the petitioner contends that the occupants of structure 7,8 and 10 are close relations of the petitioner and order of status quo ought to operate also in respect of the said structures, because entire chawl was constructed by the petitioner. It is not possible to accept this submission. This being contempt action, the order of

status quo as is on record, will have to be considered strictly to mean that it is confined to premises occupied by the petitioner.

3. Counsel for the petitioner would then contend that even if that interpretation is to be applied the respondents are in contempt as they have partly demolished even structure No.12 occupied by the petitioner. Except the statement made on affidavit there is nothing on record to substantiate this position. The counsel for the petitioner wanted to rely on some photographs which is not the part of the record. Besides, the said photographs are disputed by the other side on the ground that it does not pertain to the concerned structure. On the other hand, in the reply affidavit filed by the respondents in particular, respondent No.4, it is clearly stated that structure occupied by the petitioner has not been affected in any manner and the same has been preserved. Photograph to support this position was tendered across the bar on the last occasion. Be that as it may, statement on affidavit of respondent No.4 will have to be accepted that the structure No.12 occupied by the petitioner has not been disturbed so far. Besides, the respondent No.4 has stated on affidavit that the action taken on 3rd

January, 2006 was not at the instance of respondent No.4 but by the staff of the respondent No.2 following due process. The petitioner has no grievance against the Additional Collector, Encroachment in the present petition or for that matter further affidavit filed by the petitioner. Understood thus, petition is disposed of with observation that in so far as structure occupied by the petitioner, which is now described as structure-12, parties will maintain status quo with regard to that structure and the authorities will follow due process of law.

4. It is made clear that disposal of this petition is not an expression of opinion on the merits of the contentions of the parties available to them in appropriate proceedings.

5. Ordered accordingly.